

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9497 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

AJITBHAI CHIMANBHAI CHAUHAN

Versus

STATE OF GUJARAT

Appearance:

MS KRISHNA U MISHRA for Petitioner No. 1
MR AMRISH K PANDYA for Petitioner No. 1
MR RM CHAUHAN, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 14/10/2003

ORAL JUDGEMENT

1. By way of this Special Civil Application, the petitioner has challenged the order dated 24.05.2003 passed by the District Magistrate, Bhavnagar, against

him, in exercise of powers under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "PASA Act") declaring the petitioner to be a "dangerous person" within the meaning of the PASA Act, and directing the detention of the petitioner. In pursuance of the said impugned order in this petition, the petitioner is detained in jail since 24.5.2003.

2. The grounds of detention served upon the petitioner and as placed on record reveal that the detaining authority took into consideration the fact that six crimes registered against the petitioner on 14.05.2002, on 25.10.2002, on 11.11.2002, on 4.03.2003, on 7.03.2003 and on 12.03.2003 under Section 379 of the IPC for the theft of two wheeler vehicles. The detaining authority also took into consideration in all three in-camera statements of the witnesses as recorded by the sponsoring authority on 16.5.2003, verified by the Sub-Divisional Police Officer on 20.5.2003 and verified by the detaining authority on 22.5.2003 revealing the incidents occurred on one month before, 15 days before and 10 days before the recording of the in-camera statements. From the above material, the order impugned came to be passed by the detaining authority.

3. Learned Advocate Mr.Amrish K.Pandya for Ms. Krishna U. Mishra for the petitioner and learned AGP Ms. Mita Panchal for the respondents were heard at length.

4. Out of various contentions urged on behalf of the petitioner and controverted by the AGP, from rival contentions, the matter can be discussed and decided on the sole ground that there is any delay in passing the detention order so as to snap the live link between the objectionable activities and the passing of the detention order. Undisputably, the last offence came to be registered against the petitioner on 12.3.2003 and the order impugned was passed on 24.5.2003 causing delay of about two months, though in between on 16.5.2003, as aforesaid, three statements are recorded, but it appears that the statements are recorded to cover the period of two months elapsed between the date of the registration of the last offence against the petitioner and the passing of the order. The facts of this case therefore is covered by a decision of this Court in the matter of ELESH NANDUBHAI PATEL vs. COMMISSIONER OF POLICE, AHMEDABAD CITY, reported in 1997 (1) GLH 381. In para 21, this Court observed as under:

"21. In the instant case, the last registered

case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996 i.e. after a delay of 5 months and 15 days. It is of course true that the detaining authority has relied on two incidents of 2nd October and 10th October, 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. The unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash v. State of U.P., reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S. Ramamurthy reported in 1993 (2) Suppl. SCC 61."

The order impugned in this petition is required to be quashed and set aside on this ground along.

5. In the result, this Special Civil Application is allowed with no order as to costs. The order impugned in this Special Civil Application passed by the District Magistrate, Bhavnagar, on 24.05.2003 under Section 3(2) of the PASA Act against the petitioner is quashed and set aside. Petitioner is directed to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute.

(J.R. Vora, J.)

p.n.nair